

Service Date: December 18, 2006

DEPARTMENT OF PUBLIC SERVICE REGULATION  
MONTANA PUBLIC SERVICE COMMISSION  
P.O. Box 202601  
Helena, Montana 59620-2601

IN THE MATTER of Brian David Parks dba )	TRANSPORTATION DIVISION
Mountain Express Taxi, Missoula, Montana, )	DOCKET T-06.14.PCN
Montana, Application for a Montana Intrastate )	ORDER NO. 6778a
Certificate of Public Convenience and Necessity. )	

**FINAL ORDER**

**APPEARANCES**

**FOR THE APPLICANT**

Ryan C. Willmore, Browning, Kaleczyc, Berry & Hoven, 269 West Front Street,  
Missoula, MT 59802.

**FOR THE PROTESTANTS**

Elaine Olsen, 361 Rummel Lane, Hamilton, MT 59840.

**COMMISSION STAFF**

Timothy N. Sweeney and Robin A. McHugh, Legal Division.  
Wayne Budt and Nickie Eck, Transportation and Centralized Services Division.

**INTRODUCTION AND BACKGROUND**

On October 10, 2006, Commissioner Doug Mood issued Proposed Order No. 6778 in this docket, granting a Class B passenger motor carrier certificate to Brian David Parks, d/b/a Mountain Express Taxi. The signature page of that Order contained an error, and an "Errata - Order No. 6778" was issued on October 19, 2006. The time period for filing exceptions to the Proposed Order began on that date. On November 6, 2006, Protestant Victor Pizzola, d/b/a Valley Taxi (Valley Taxi), appearing pro se, filed a "Motion to Reconsider" Proposed Order No. 6778. Substantively the Valley Taxi motion constitutes exceptions to the Proposed Order, pursuant to Commission rule and § 2-4-621, MCA; and the Commission will respond as if the Valley Taxi filing had been

correctly labeled. On November 17, 2006 Applicant Mountain Express Taxi filed a response to the Valley Taxi exceptions.

### DECISIONS ON EXCEPTIONS

The Valley Taxi exceptions were filed in over 30 pages of longhand, and had to be typed by Commission staff to be even remotely comprehensible. Even typed the Valley Taxi exceptions are rambling and disjointed, and extremely difficult to follow. Regardless, to be lenient to a pro se party, the Commission responds to the arguments on exceptions, as it can decipher them, as follows:

First, it is not correct that there is no evidence on the record regarding Missoula. Witness Jeannie Poe described her need to transport a person from Ravalli County to Missoula. TR 28-29. Such transportation is authorized by the Proposed Order.

Second, Valley Taxi contends that the limitation "Transportation as a limousine is prohibited" should read "Transportation in a limousine is prohibited." Valley Taxi misunderstands the purpose of the limitation. The authority at issue allows Mountain Express Taxi to operate as a taxi business, pursuant to filed tariffs, and prohibits it from operating as a limousine business. Mountain Express is free to use limousine vehicles in its taxi business, although presumably it would not be economical to do so.

Third, Valley Taxi is concerned that the limitation "Transportation that originates and terminates in Missoula County is prohibited" is not clear. This language is common in Commission motor carrier certificates, and did not elicit a challenge from any Missoula carrier. It means that under this authority a transportation movement cannot begin and end in Missoula County; or, in other words, a transportation movement cannot be entirely within Missoula County, nor can it begin in Missoula County, go to Ravalli County, and return.

Fourth, at paragraph 37 of the Proposed Order Commissioner Mood addressed the "harm to existing carriers" element of a Public Convenience and Necessity determination. As explained at that paragraph, no evidence of harm to existing carriers was presented; and, therefore, the Commission must presume that a grant of authority will not harm existing carriers contrary to the public interest.

Fifth, Valley Taxi was provided a witness list in the Mountain Taxi prehearing memorandum.

Sixth, Commissioner Mood properly refused to admit into evidence discovery responses from persons not present at the hearing.

Seventh, the Proposed Order correctly applies Application of Jones Brothers Trucking, Docket No. T-9469, Order No. 5987a, p. 9 (1990). See Proposed Order at ¶ 33. In Jones Brothers the Commission explained that the best evidence of public need is from shipper witnesses, those "who actually use, or have tried to use, or who desire to use a particular kind of transportation." Id. There is ample evidence of this kind on this record. Jones Brothers does not say that only shipper witnesses can establish public need; shipper witnesses defined as persons who themselves need to be transported as passengers. Relevant evidence of public need can include, as was the case on this record, persons whose job it is to arrange transportation for others, and who in that capacity have knowledge of existing transportation services.

Finally, Valley Taxi effectively asks the Commission to reconsider decisions it (not Commissioner Mood) made in response to prehearing motions made by Valley Taxi and Mountain Express Taxi. Those decisions are described at paragraphs 3, 4 and 5 of the Proposed Order. The Commission has reviewed those decisions, finds that they are based on law and are correct in the context of this application.

The Commission finds that on exceptions Valley Taxi has not provided sufficient reason to modify Proposed Order No. 6778. Proposed Order No. 6778 is based on substantial credible evidence and is otherwise lawful.

### CONCLUSIONS OF LAW

The Commission affirms and adopts by reference the Conclusions of Law at Proposed Order No. 6778.

### ORDER

The Commission adopts Proposed Order No. 6778 as its Final Order in this docket. The application in this docket is granted as follows:

Class B – Passengers between all points and places in Missoula and Ravalli Counties in the State of Montana. LIMITATIONS: (1) Transportation as a limousine is prohibited; and (2) Transportation that originates and terminates in Missoula County is prohibited.

THE FOREGOING ORDER was adopted by the Department of Public Service Regulation of the State of Montana, Public Service Commission, IN OPEN SESSION at Helena, Montana, this 12th day of December, by a vote of 5-0. This Order was subsequently approved on circulation.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

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GREG JERGESON, Chairman

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BRAD MOLNAR, Vice Chairman

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DOUG MOOD, Commissioner

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ROBERT H. RANEY, Commissioner

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THOMAS J. SCHNEIDER, Commissioner

ATTEST:

Connie Jones  
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this Order. A motion to reconsider must be filed within ten (10) days of the service date of this Order. See 38.2.4806, ARM.

## **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the Final Order issued in Docket T-06.14.PCN in the matter of Brian David Parks dba Mountain Express Taxi, Missoula, Montana, Application for a Montana Intrastate Certificate of Public Convenience and Necessity, has today been sent to all parties listed.

MAILING DATE: December 18, 2006

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FOR THE COMMISSION

### **FIRST CLASS MAIL**

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### **AS ITS INTERESTS MAY APPEAR:**

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